

**REGULAR STATE BANKING BOARD MEETING  
OFFICE OF THE COMMISSIONER  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
2000 SCHAFER STREET, SUITE G  
BISMARCK, NORTH DAKOTA**

**March 11, 2004**

The regular meeting of the State Banking Board was held in the Office of the Commissioner, Department of Financial Institutions, 2000 Schafer Street, Suite G, Bismarck, North Dakota. Chairman Karsky called the meeting to order at 9:02 a.m., Thursday, March 11, 2004.

**MEMBERS PRESENT:** Timothy J. Karsky, Chairman  
Ron Braseth, Member  
Launa Moldenhauer, Member  
Roger Monson, Member  
Gary Petersen, Member  
Terry Zeltinger, Member

**MEMBER ABSENT:** Bill Daniel, Member

**ALSO PRESENT:** Robert J. Entringer, Assistant Commissioner  
Jeff Jungman, Chief Examiner – Banks  
Scott Miller, Assistant Attorney General  
Wayne Hoffner  
Don Schmeling  
Dean Bergstedt  
Gordon Hoffner  
Dana Ereth  
Greg Hoffner  
Myra Savelkoul  
Vic Weisz  
Chuck Stroup

## **APPROVAL OF MINUTES**

Chairman Karsky indicated the Board received copies of the minutes of the regular meeting held on January 8, 2004. **It was moved by Member Zeltinger, seconded by Member Braseth, and unanimously carried by a vote of 6 to 0, with Member Daniel absent, to approve the minutes as published.**

## **REVIEW AND APPROVE PROPOSED RULES ON DISCLOSURE OF CUSTOMER INFORMATION BY FINANCIAL INSTITUTIONS**

Assistant Commissioner Entringer indicated the hearing regarding the proposed administrative rules was held at the regular State Banking Board meeting of January 8, 2004, at which time an additional 30 day comment period followed. The comment period ended February 9, 2004, and no additional comments have been received. The Board needs to review and approve the administrative rules if so desired, and the rules would then be sent to the Attorney General's Office to ensure that the proper procedures were followed. Once determination is made by the Attorney General's Office, they would issue a letter to that effect, and the rules would be sent to the Legislative Council for final publication, at which point the rules would become effective the first of the month following the month of publication by Legislative Council. The Department is then required to appear before the Interim Legislative Rules Committee and if approved at that point, the rules are then final.

Assistant Commissioner Entringer indicated the Interim Legislative Rules Committee could make changes to the rules if they so desired. Once the rules are approved by the Interim Committee, they are then final.

**It was moved by Member Monson, seconded by Member Petersen, and unanimously carried by a vote of 6 to 0, with Member Daniel absent, to approve the proposed rules subject to review by the Attorney General's Office.**

## **THE UNION BANK, BEULAH – TO ESTABLISH A FACILITY AT HAZEN**

Assistant Commissioner Entringer reviewed his Memorandum with the Board, indicating the application was deemed complete on February 6, 2004, and was published pursuant to Section 13-02-05-05.1 of the North Dakota Administrative Code, in the Beulah Beacon and the Hazen Star on February 5 and 12, 2004. The comment period ended February 27, 2004, and direct notice was also provided to one area bank. No comments were received, nor were there any requests for an opportunity to be heard before the Board. However, there was one request for a copy of the application from Chuck Stroup.

Assistant Commissioner Entringer reviewed the statutory criteria found in Section 6-03-13.3 of the North Dakota Century Code. He indicated the proposed management of the facility is President Gordon Hoffner, along with Wayne Hoffner. President Hoffner reports 32 years of banking experience, including 16 as President and a member of the Board of Directors of The Union Bank. Wayne Hoffner reports 5 years of banking experience, in addition to holding an insurance license, as well as Series 6, 63, and 65 securities licenses. The bank anticipates hiring 6 full-time employees as well.

Assistant Commissioner Entringer stated the application indicates the trade area primarily consists of the cities of Hazen and Stanton, and the immediate surrounding areas. These areas are already included in the applicant's delineated trade area for CRA, and it is not an expansion of the bank's existing trade area. The application indicates a relatively large customer base already in the Hazen, Stanton, and surrounding areas. The only other bank in the proposed trade area is the Union State Bank of Hazen. The application indicates approval of this proposed facility will have minimal, if any, impact on the Union State Bank of Hazen, based on the financial projections included in the application. The applicant indicated they do not feel the proposed facility will seriously injure any other banks, and their commitment to better serve their customers in the existing trade area will offset any negative impact to the other bank.

Assistant Commissioner Entringer indicated the description of the proposed facility is set forth within the application, and the anticipated cost is expected to be in the \$880,000 to \$990,000 range for land, building, furniture and fixtures, as well as other equipment including security equipment. This would place the bank at 50.5% of equity capital invested in fixed assets, which is well within the limitation of 65% of equity capital as set forth in statute.

Assistant Commissioner Entringer stated the projections in the application indicate deposit growth at the end of year one of \$2 million, growing to \$6.5 million at the end of the third year; loans are estimated to be \$2 million at the end of the first year, increasing to \$5 million at the end of the third year. Projections indicate the applicant expects to lose money the first three years of operation, and turning a small profit in year four. The projected losses are not expected to adversely impact the bank's equity capital, and the projections appear to be well supported and accurate.

Assistant Commissioner Entringer stated the convenience and needs is discussed under Section 6 of the application, which indicates the bank currently has 292 loan customers in the Hazen and Stanton areas, totaling \$3,074,000, as well as 392 depositors totaling \$2,319,000. The applicant indicates the proposed facility will provide more of a convenience for these existing customers and better serve their needs. The application also included the public section of the CRA Performance Evaluation dated April 19, 1999.

Assistant Commissioner Entringer invited the applicant to provide any further information in support of their application.

Dana Ereth, EideBailly, LLP, reviewed the application section by section with the Board. Mr. Ereth began with the financial projections, pointing out that the most important thing to note is the slowing growth trend that the bank has been experiencing which is fairly common in rural banks in North Dakota. Mr. Ereth indicated the profitability has increased over the least five years; however, at the present time the bank is approximately at the peer group level for profitability.

Mr. Ereth indicated management would be President Gordon Hoffner, along with his son Wayne Hoffner, and that the bank had recently hired another local individual adding support to the management team, as this individual is very familiar with the local area.

Mr. Ereth continued discussing other banks and facilities in the area, pointing out that this is not an expansion of the bank's trade area, as Hazen is located within the bank's CRA trade area. Mr. Ereth stated the bank's last CRA rating was outstanding, which is fairly uncommon after the federal regulators changed the CRA rules. Since Hazen is already in the bank's CRA area and they have an outstanding rating, there is no question the bank is going to increase the

convenience for the people in that area, and should only have a positive impact on the bank's CRA rating.

Mr. Ereth indicated the facility would be located a few blocks from the Union State Bank of Hazen, and the anticipated costs for construction are utilizing a range. Mr. Ereth indicated in the calculation of fixed assets to equity capital the applicant used the dollar amount on the high end of the range to show they are still within the limitations set forth in statute. Mr. Ereth continued with the future earning prospects in Section 5, indicating the bank is not projecting strong growth. These numbers are based on their experience of moving the main office from Halliday into Beulah, of which the results closely approximated that of the projections.

Chairman Karsky asked for a point of clarification as far as the projections – whether those numbers were including the existing customers or just new growth anticipated. Mr. Ereth indicated it was only new growth included in the projections. Mr. Ereth continued that the projections indicate a small profit in year four, with the projected opening date, if approval is granted, of July 1, 2004.

Mr. Ereth addressed the convenience and needs section of the application, and pointed out that it is important to note that Beulah and Hazen are only 10 miles apart. He indicated the communities identify with each other as far as trade. Mr. Ereth indicated going back to the convenience factor that any customers they have in Beulah may travel to Hazen for business purposes and it would be a convenience for them as well.

Mr. Ereth reiterated since the bank has an outstanding CRA rating and the Hazen and Stanton areas are already included in their delineated trade area, this should only enhance the bank's CRA rating.

Mr. Ereth stated as far as business and proposed hours the bank would be offering all those services they currently have, adding that the lobby and drive-up would be open six days per week.

Mr. Ereth reviewed the capital projections, indicating that the capital bottoms out in year three as a result of the operating losses and then begins to increase after year three. At the low point the bank is projecting total risk based capital of 10.45%, which is above the 10% level required to be considered well-

capitalized, and for the state primary capital ratio the low point is just below 9%, which is well above the 7.5% set in policy.

Chairman Karsky reminded the Board this is not a hearing but simply an application being considered for approval and, as such, neither party has the right to cross examine. However, the Board does have the opportunity to call a hearing if they so desire, and if that would be the case no decision would be made at this time.

Member Zeltinger indicated the applicant bank's name, The Union Bank, is very similar to the Union State Bank of Hazen, and wondered if that was a source of any confusion for customers. President Hoffner indicated as of yet they have not encountered any confusion, adding that perhaps when the facility opens there may be some confusion at the post office level, which could be resolved by simply returning mail sent to the wrong address.

Member Zeltinger inquired as to the projections asking whether or not the applicant intends to transfer the currently existing loans and deposits for branch accounting purposes to the proposed facility, or would only the new accounts and loans at the proposed location be used to track profitability, since the application is projecting losses the first three years. President Hoffner indicated as far as the application is concerned they are basing the projections on not transferring the currently existing customers to the proposed facility. President Hoffner indicated they would likely transfer the currently existing customers to the new location; however, the application projections are based on new growth only.

President Hoffner also offered comments in support of the application by indicating since his son had returned to the banking operation in July 2003 and management had been receiving requests for internet banking services from its customers, they decided to place that request as a top priority. Therefore, the bank recently added internet banking and telephone banking to its list of services, and indicated because imaging was going to be required in the banking industry they are now on line with imaging their checks that are processed. He concluded they are trying to provide updated services for their customers.

Mr. Ereth addressed the convenience, needs, and welfare of the community and area to be served. He stated he did not believe convenience could be argued as the bank has currently existing customers in the Hazen and Stanton communities, as well as surrounding areas. Mr. Ereth indicated with regard to need, President

Hoffner has indicated to him that the community has been very respectful to the idea of the bank adding a facility in the Hazen community. With regard to welfare, Mr. Ereth indicated the bank is constructing a \$1 million facility, which is a huge financial commitment, adding that welfare is certainly enhanced with that type of investment in the community. Mr. Ereth again referred to the outstanding CRA rating the bank received, which includes the Hazen and Stanton areas. He stated the proposed facility would enhance the welfare of the people in those communities.

Mr. Ereth referred to the financial strength of the bank in relation to the cost of establishing and maintaining the proposed facility, and stated the major cost would be the construction of the building; however one of the issues that needs to be addressed is that the existing main bank needed to do something because they are in need of space in the Beulah and Halliday offices. Mr. Ereth stated if the bank did nothing they were going to have to put money into remodeling the main bank office; therefore, the thought process was instead of expanding the current location, why not consider going into a new community. Mr. Ereth continued that a number of the employees in the Halliday office are nearing retirement age and the potential labor pool in Halliday is very limited, where the Hazen community gives a better opportunity to attract labor to replace individuals as they retire. Mr. Ereth indicated a potential million dollar facility is a huge investment; however, when looking at it as part of the whole picture, the bank needed to do something to expand the current offices anyway. Mr. Ereth stated the bank will remain well capitalized throughout the projection period. He indicated when the bank relocated its main office from Halliday to Beulah there were some constraints placed on the bank by the regulators as far as growth, and the bank responded well to those restrictions. Mr. Ereth pointed out as shown in the projections the bank is fairly conservative as far as growth, and based on the history of this bank from the previous relocation, they expect to control that growth and remain well capitalized.

Mr. Ereth discussed the serious injury aspect of the criteria, indicating the only other bank in the Hazen area is the Union State Bank of Hazen which currently controls \$37 million in deposits, and based on the projections included in the application, it is hard for him to believe this could be construed as serious injury to the other bank.

Mr. Ereth stated a lot of time was spent analyzing where this bank's growth potential is going to come from and the strategic planning board explored many options, and everything the board looked at came back to the community of Hazen,

which made the most economic sense in serving existing customers. He stated the location, knowledge of the region, and lending background all pointed toward future growth occurring in the Hazen community.

Member Monson inquired as to the population of Beulah, to which Mr. Hoffner indicated it is approximately 3,500. Member Monson asked what the population of Hazen is, and President Hoffner indicated it is 2,700 to 2,800. President Hoffner indicated neither community is growing, but are simply holding their own. He stated because of the energy plants both communities are working very hard to keep the people in the communities.

Mr. Ereth referred to the census numbers included in the application, which indicate both communities have declined in population; however, they have a high average annual wage and a younger than average age population. Mr. Ereth stated when you look at the demographics, if you take the Bismarck and Fargo markets out of the census data the only areas of the state that show a growth in population in North Dakota are the reservations. Mr. Ereth stated the bank looked at these issues when considering where their growth potential would come from. Mr. Ereth continued one of the reasons the bank requested to relocate its main office from Halliday to Beulah was because Halliday is a dying community, adding that Dunn County is losing population, and the only other competition in Dunn County are facilities of First International Bank & Trust, Watford City, and American State Bank and Trust of Dickinson. Mr. Ereth stated all the information looked at eight years ago supported moving the main office from Halliday to Beulah. Mr. Ereth stated with the population numbers and taxable sales numbers, he does not believe anyone would consider branching anywhere other than Bismarck or Fargo, if those are the only factors considered.

President Hoffner stated that Wayne Hoffner would be relocating from Halliday to Hazen, and added Myra Savelkoul was hired to add to the management team in Hazen.

Chairman Karsky asked for further comments from anyone in favor of the application; no further comments were given.

Chairman Karsky asked if there was anyone present that wished to make comments opposing the application. No comments were given; therefore, Chairman Karsky asked Assistant Commissioner Entringer for his recommendation regarding the application.



Assistant Commissioner Entringer indicated the Department's recommendation is to approve the application of The Union Bank, Beulah, to establish a facility at 222 7<sup>th</sup> Street NW, Hazen.

**It was moved by Member Zeltinger and seconded by Member Moldenhauer to approve the application by The Union Bank, Beulah, to establish a facility at 222 7<sup>th</sup> Street NW, Hazen, and also approve the proposed Order.**

Chairman Karsky stated he feels the convenience and needs criteria are met based on the volume of currently existing customers, and with the information provided it certainly indicates the community is viable and the bank would be well received.

Member Moldenhauer inquired as to whether the Department had more specific numbers as to the breakdown of the investment in fixed assets. Assistant Commissioner Entringer indicated the Department only has what was included in the application. Member Moldenhauer noted that the proposed Order indicates if there is a material change to the application the applicant would need to receive additional approval from the Board, and wondered if there was a specific percentage applied to that material change. Assistant Commissioner Entringer indicated no specific percentage was given, but would be based on the Department's judgment.

There being no further discussion, **the motion was unanimously carried with a vote of 6 to 0, with Member Daniel absent.**

## **DEPOSIT PRODUCTION OFFICE ACTIVITY**

Chairman Karsky indicated years ago the Department had approved activities for Loan Production Offices (LPO) for all state-chartered banks, and that the Department now has a request from a bank that would like to conduct deposit production activities. Chairman Karsky indicated Deposit Production Office (DPO) activities are authorized for national banks and that if the Board approved these activities it would be for all banks.

Assistant Commissioner Entringer reviewed the information provided for the Board regarding DPOs, and referred to Section 7.4004 of 12 CFR which talks about the establishment and operation of a DPO by a national bank. Within that Section, you can see that a DPO is permitted to solicit deposits, provide information about deposit products, and assist persons in completing application forms and related documents to open a deposit account. Assistant Commissioner Entringer indicated a DPO, as well as a LPO and a remote service unit are not considered branches within the meaning of 12 U.S.C. 36(j) and 12 CFR 5.3(d)(1), as long as the office does not receive deposits, pay withdrawals, or make loans. Assistant Commissioner Entringer indicated the state does not consider a LPO to be a branch either.

The Section goes on to say that all deposit and withdrawal transactions of a bank customer using a DPO must be performed by the customer, either in person at the main office or a branch office of the bank, or by mail, electronic transfer or some other similar method of transfer. Assistant Commissioner Entringer indicated this is very similar to a LPO in that a LPO cannot make loans, but can provide information, can assist in preparing applications, and the employees of a LPO can sit on a credit committee, but cannot make loans, disperse loans, etc.

Assistant Commissioner Entringer indicated the next Section 7.4005 talks about a combination LPO, DPO, and remote service unit, which is authorized under national banking law, and again talks about the fact that they are not a branch within the meaning of federal law by virtue of the combination. Assistant Commissioner Entringer referred also to the Interpretative Letter that was attached which outlines the types of activities that can be performed at a combination LPO/DPO. The Interpretative Letter also talks about the operation of a courier service in a shared space with a LPO which is permitted as long as the bank does not have an ownership interest in the courier service, but it can be a pickup point for the courier service.

Chairman Karsky stated if the Board would decide to approve the activities of a DPO, also included would be proposed rules for operation of a DPO. Chairman Karsky indicated the proposed rules are virtually identical to the types of activities that can be conducted at a LPO.

After further discussion, **it was moved by Member Braseth and seconded by Member Monson to authorize the Deposit Production Office activities for North Dakota state-chartered banks pursuant to Section 6-03-38 of the North**

**Dakota Century Code. The motion was unanimously carried by a vote of 6 to 0, with Member Daniel absent.**

**It was also moved by Member Monson, seconded by Member Moldenhauer, and unanimously carried by a vote of 6 to 0, with Member Daniel absent, to begin the process to adopt the proposed rules for Deposit Production Offices as drafted.**

## **NAME CHANGE – STARION FINANCIAL CORPORATION, BISMARCK**

Chairman Karsky indicated the proposed name change is to change the name from Starion Financial Corporation, Bismarck, to Starion Financial, Bismarck. **It was moved by Member Braseth, seconded by Member Zeltinger, and unanimously carried by a vote of 6 to 0, with Member Daniel absent, to approve the name change of Starion Financial Corporation, Bismarck, to Starion Financial, Bismarck.**

## **ITEMS TO BE NOTED**

### *Department of Financial Institutions*

#### Articles of Amendment

Bank Center First, Bismarck, to change number of directors from 6 to 9.

Stutsman County State Bank, Jamestown, to change number of directors from 6 to 5.

Bank of Turtle Lake, Turtle Lake, to change number of directors from 5 but no more than 7, to 7 but no more than 8.

### *Comptroller of the Currency*

Effective 2-20-04, Wells Fargo Bank North Dakota, National Association, Fargo, merged into Wells Fargo Bank, National Association, San Francisco, CA.

Effective 3-1-04, The First National Bank of McClusky, McClusky, opened a branch at 101 Clark Avenue, Goodrich.

Effective 1-1-04, U.S. National Association ND, Fargo, application to merge filing under Section 1206 of American Homeownership and Economic Opportunity Act of 2000.

The Board recessed at 9:55 a.m., and reconvened at 10:00 a.m. for the public hearing on the application by VISIONBank for a bank organization certificate.

### **VISIONBANK, 3000 25<sup>TH</sup> STREET SOUTH, FARGO**

Joining the meeting for the hearing were Dan Carey, David Felch, Michael McNair, John A. Brown, Thomas K. Watson, Steven H. Steinborn, Fred Manuel, and Craig Larson.

At the conclusion of the hearing at 1:45 p.m., Chairman Karsky reviewed the statutory criteria for the Board found under Section 6-02-04 of the North Dakota Century Code, which specifies the contents of the organization certificate. Chairman Karsky continued with Section 6-02-07, North Dakota Century Code, entitled Determination of board – Recording of organization certificate, and reviewed the statute with regard to whether the determination of the State Banking Board is favorable and the requirements of recording the organization certificate.

**It was moved by Member Zeltinger and seconded by Member Braseth to approve the organization certificate for VISIONBank, 3000 25<sup>th</sup> Street South, Fargo.**

Chairman Karsky reviewed the criteria for the Board to determine whether the organization certificate application should be approved. The criteria are: whether the place where such banking association is proposed to be located is in need of further banking facilities; whether the proposed association is adapted to the filling of such need; and whether the proposed incorporators are possessed of

such character, integrity, and reputation, and financial standing as shown by a detailed financial statement to be furnished by them, and such statement to be held confidential by the Board, that their connection with the banking association will be beneficial to the public welfare of the community in which such bank is proposed to be established.

Chairman Karsky indicated he felt because of the fact that the bank has accumulated \$35 million in assets in approximately one year demonstrates that there is a need for further banking facilities in Fargo. Chairman Karsky indicated the growth also indicates that the proposed association is adapted to the filling of the need. Chairman Karsky indicated the proposed incorporators have in excess of 100 years of banking experience; therefore, he does not question the character, integrity, reputation, and financial standing of those incorporators.

There being no further discussion, **the motion was unanimously carried with a vote of 6 to 0, with Member Daniel absent.**

Chairman Karsky asked that the applicant draft the proposed Findings of Fact, Conclusions of Law, and Order for the Board's consideration at the next State Banking Board meeting to be held May 13, 2004.

Mr. Manuel began discussing the proposed merger as part of the transaction with the VISIONBank organization. By definition, the purchase and assumption of deposits and assets is considered a merger. Once the organization certificate was granted, the bank would have to apply for a merger to acquire the assets and assume the liabilities of the Fargo facility of the Security State Bank of North Dakota, Hannaford. Mr. Manuel indicated the applicant would submit an interagency bank merger application to the FDIC and Department of Financial Institutions, and follow the publication requirements of the FDIC to expedite the application. It is anticipated the application would be submitted so that publication requirements are completed and the Board could act on the application at its May 13, 2004, meeting. Mr. Manuel explained the remainder of the process for the bank charter from the federal regulator perspective and the holding company application process.

Chairman Karsky asked Mr. Manuel what additional information the Department would be receiving in the merger application that has not already been reviewed in the bank charter application. Mr. Manuel indicated he did not believe

there would be much, if any, additional information necessary to be provided for the merger application.

Chairman Karsky referred to the Loan Production Office application, indicating he could approve that separately as Commissioner; however, Mr. Manuel asked if the Loan Production Office could be approved subject to approval of the purchase and acquisition, and Chairman Karsky agreed with the request. Mr. Manuel inquired as to whether the approval of the Loan Production Office subject to the purchase and acquisition could be a part of the Order for the organization certificate, and Chairman Karsky indicated he would rather have the Board act on these items separately.

**It was moved by Member Braseth and seconded by Member Monson to approve the Loan Production Office of VISIONBank to be known as VISIONBank Mortgage and Loan. The motion was unanimously carried by a vote of 6 to 0, with Member Daniel absent.**

#### **AMERICAN STATE BANK & TRUST COMPANY OF WILLISTON, WILLISTON – WAIVER REQUEST TO RETAIN LIFE INSURANCE ON FORMER EMPLOYEE**

Chairman Karsky stated the request of American State Bank & Trust Company of Williston indicates the cash value life insurance policy on the former employee's life was designed to provide for the obligations of the bank in relation to various benefit programs. The obligations to the former employee have been paid in full; however, the bank continues to provide significant benefits to other employees, including health insurance premiums for employee selected coverage level, various group term life insurance policies, contributions to the bank's 401(k) program, and expenses of the ESOP plan. The expenses enumerated above totaled approximately \$422,000 in 2003, and those expenses are expected to rise in the future. The letter continues by saying the Board of Directors and senior management are developing a plan to transfer the insured individual for these policies to other suitable current employees, but that additional time if needed in order to identify the candidates so that the Board and senior management have an appropriate amount of time to track the performance of the potential candidates. The bank indicates the process would require an approximate 24 months.

The Board having considered the information included in the letter felt that 24 months was a lengthy time, and that 12 months should be sufficient for the Board of Directors to determine the performance of those candidates.

**It was moved by Member Monson and seconded by Member Moldenhauer to grant the American State Bank & Trust Company of Williston, Williston, a waiver on Section 13-02-14-03(10) of the North Dakota Administrative Code for a period of 12 months. The motion was carried unanimously by a vote of 6 to 0, with Member Daniel absent.**

The meeting went into closed session at 2:05 p.m.

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Timothy J. Karsky, Chairman

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Robert J. Entringer, Secretary